

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARY PATRICIA HYNOSKI,

Plaintiff,

v.

CIV. 09-0812 MV/KBM

JOHN HARMSTON, et al.,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

The Magistrate Judge filed her Proposed Findings and Recommended Disposition on December 7, 2009 and in a separate order noted the new fourteen-day period in which to object. *See Docs. 8, 9.* Plaintiff filed her objections on January 4, 2010, and her objections thus appear untimely and she appears to have waived appellate review. *See Doc. 11.* This Court has nonetheless considered the objections *de novo*, and finds them without merit. Having conducted a *de novo* review of the record and the Magistrate Judge's Proposed Findings and Recommended Disposition, this Court has determined that this case should be dismissed for the reasons set forth in the Magistrate Judge's Proposed Findings and

Recommended Disposition. This Court further finds that it would be futile for Plaintiff to amend her complaint as to her claims against the seven State Court Judges named as Defendants, as they are entitled to judicial immunity, and therefore the dismissal will be with prejudice as to Plaintiff's claims against the State Court Judges. While it does not appear that Plaintiff intended to name Dr. John Harmston and Lea Regional Medical Center as Defendants in her Amended Complaint, to the extent the Amended Complaint could be construed as naming Dr. John Harmston and Lea Regional Medical Center as Defendants, the claims against these Defendants will be dismissed without prejudice as Plaintiff has not shown that they were acting under the color of state law as explained in Magistrate Judge Garza's September 22, 2009 Memorandum Opinion and Order to Show Cause Why Case Should Not Be Dismissed. *See Doc. 5.*

This Court further finds Plaintiff's requests for a hearing, as set forth in her letter, filed January 7, 2010, and her Motion for a Hearing, filed February 18, 2010, should be denied as a hearing would not aid in resolution of the matters presently before the Court. *See Docs. 12, 14.* Likewise, this Court will deny Plaintiff's Motion to Compel, filed February 18, 2010, seeking to compel her former doctor, Dr. John Harmston, to attend the next court hearing. *See Doc. 13.*

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff's objections (Doc. 11) are OVERRULED;
2. Plaintiff's motions for a hearing (Docs. 12, 14) are DENIED;
3. Plaintiff's motion to compel (Docs. 13) is DENIED;
3. The Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 8) are ADOPTED; and
4. Plaintiff's motion to proceed *in forma pauperis* (Doc. 3) is DENIED, and this matter be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B), as it is frivolous and fails to state a cognizable federal claim, with Plaintiff's claims against the seven judges named as Defendants being dismissed with prejudice and her claims as to the remaining Defendants, if any, being dismissed without prejudice.



MARTHA V. VAZQUEZ
CHIEF UNITED STATES DISTRICT JUDGE